



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FINAL AMENDED
FACT SHEET FOR S.B. 1388

rulemaking exemption; one-year review

Purpose

Establishes agency procedures to submit rules, pursuant to exemption, for review by the Governor's Regulatory Review Council (Council) within one year after adoption.

Background

Arizona Revised Statutes, Title 41, Chapter 6, Article 3, establishes the statutory requirements for agencies in regard to rulemaking authority. Statute defines *rulemaking* as the process for formalization and finalization of a rule and a *rule* as an agency's statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency (A.R.S. § 41-1001). Additionally, statute establishes an *agency* for the purposes of rulemaking as boards, commissions, departments, state administrative units and officers with the exception of the Legislature, courts and the Governor (A.R.S. § 41-1001). Statute requires that agencies make rules of practice setting forth the nature and requirements of all formal procedures available to the public (A.R.S. § 41-1003).

Statute outlines requirements related to the rulemaking process including the time and manner of rulemaking, emergency and expedited rulemaking, public notice, opportunities for stakeholder comment and final review by the Council. According to statute, a rule is rendered invalid unless it is made and approved in substantial compliance with statutory requirements, with certain exceptions (A.R.S. § 41-1030).

The Council consists of six members appointed by the Governor who are subject to the Director of the Arizona Department of Administration. According to statute, the Council considers a rule based on the economic, small business and consumer impact statement provided by an agency, in addition to the benefits and costs and that the rule is not illegal or inconsistent with the legislative intent or beyond the agency's statutory authority (A.R.S. § 41-1052).

There is no fiscal impact on the state General Fund associated with this legislation.

Provisions

Agency Requirements

1. Requires each agency, for which the Legislature has granted a one-time rulemaking exemption, to review a rule within one year after adoption to determine if the rule should be amended or repealed.
2. Requires an agency to prepare and obtain Council approval of a written report, following statutory requirements, summarizing findings about the rule, supporting reasons and any proposed action.
3. Stipulates the agency's report must contain:
 - a) analysis of the rule's effectiveness with appropriate supporting data;
 - b) any written analyses of the rule based on scientific or reliable principles or methods;
 - c) whether the rule is authorized and consistent with statutes or rules and policies of the agency;
 - d) clarity, conciseness and understandability of the rule;
 - e) the estimated economic, small business and consumer impact of the rule;
 - f) analysis of the impact on Arizona's business competitiveness compared to other states;
 - g) if applicable, the agency's completion of additional statutory processes, including publishing exempt rules or allowing public comment;
 - h) determination that the probable benefits of the rule outweigh the costs while imposing minimal compliance costs;
 - i) determination that the rule, unless statutorily authorized, is not more stringent than corresponding federal law; and
 - j) compliance with the guidelines for a general permit if a rule requires a permit, license or authorization.
4. Allows an agency to include the text of an expedited rule in its report.

Council Requirements

5. Permits the Council, not earlier than six months after considering the agency's report, to require an agency to amend or repeal a rule that:
 - a) is unauthorized by statute;
 - b) is inconsistent with other statutes, rules or agency policies resulting in significant burden on the public;
 - c) imposes costs that exceed the probable benefits to the regulated person;
 - d) is more stringent, without statutory authority, than a corresponding federal law;
 - e) is not clear, concise and understandable;
 - f) does not follow general permit guidelines;
 - g) does not impose least burden to persons regulated by the rule while achieving underlying regulatory objectives; or
 - h) does not rely on valid scientific or reliable principles and methods after the Council analyzes the valid scientific or reliable principles or methods that are specific and not of a general nature.

6. Allows an agency to submit a written request to the Council to extend the time, for no longer than six months, it has to repeal or amend a rule by demonstrating good cause for the extension.
7. Requires the agency to notify the Council of an amendment or repeal of a rule.
8. Stipulates a rule automatically expires if an agency does not amend or repeal a rule by the deadline or extended date and the Council will file a notice of rule expiration with the Secretary of State and notify the agency.
9. Requires the Council, at least 90 days before the report is due, to send a written notice to the agency head listing the rule to be reviewed and when the report is due.
10. Allows an agency to file an extension with the Council, stipulating the reason for an extension, if an agency cannot provide the written report by the due date.
11. Stipulates if an agency fails to submit its report or file an extension, or if it does not submit its report within the extension period, the rule expires and the Council will:
 - a) publicize a notice in the next register stating the rule has expired and is no longer enforceable;
 - b) notify the Secretary of State that the rule expired and should be removed from the code; and
 - c) notify the agency that the rule expired and is no longer enforceable.
12. Stipulates if a rule expires, the agency must follow administrative procedures to reestablish the rule.
13. Defines *agency*, *council* and *rule*.
14. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Specifies an agency, which the Legislature has granted a one-time rulemaking exemption, must review a rule within one year of adoption.

Senate Action

GOV 2/17/16 DPA 6-0-1
3rd Read 2/25/16 27-1-2

House Action

GHE 3/10/16 DP 8-0-0-1
3rd Read 5/7/16 34-20-6

Signed by the Governor 5/19/16
Chapter 355

Prepared by Senate Research
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RH/JO/rf